

EXHIBIT “D”

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May 3, 2005

VIA E-MAIL ONLY

cmatsui@triallawhawaii.com

Clyde W. Matsui, Esq.
Matsui Chung Sumida & Tsuchiyama
Pacific Guardian Center, Mauka Tower
737 Bishop St., Ste. 1400
Honolulu, HI 96813

Re: Wayne Berry v. Hawaiian Express Service, et al.,
Civ. No. CV-03-00385-SOM-LEK

Dear Mr. Matsui:

The PCT would like to have its computer expert analyze certain of the materials held by Guidance Software. As you will recall, Guidance Software has forensic images of how the Fleming servers looked at the start and at the end of their July 2003 project. It is necessary for our computer expert to analyze certain of these materials to evaluate and opine on the similarities and differences between the 1993 FCS that Fleming was licensed to use and the freight control software Fleming was actually using between the jury verdict and June 9, 2003.

Additionally, without conceding what if anything was actually transferred to C&S (a point about which the PCT has never admitted anything notwithstanding efforts by Berry to misinterpret various of the PCT's letters), our computer expert needs to see certain of the Guidance materials because they are the electronic source of the thousands of filenames that Berry has identified as files that are infringing and/or comprise his trade secrets, or at least (in his words) are "prime suspects for further examination" in this regard. While examining these files will not as to any particular file settle the question of whether it was transferred to C&S, it might settle the question of whether it infringes, contains trade secret information, or is simply irrelevant.

Plaintiff has also expressed interest in obtaining these materials, as you can see from the attached e-mail. But Guidance Software likely wishes to be sure that its participation in any such production will not create liability of any kind. We therefore request that, to serve everyone's interests and alleviate all outstanding concerns, you issue an order requiring Guidance to produce on a "Highly Confidential -- Attorney's Eyes Only" basis electronic copies of the following materials:

Exhibit D

Clyde Wm. Matsui, Esq.

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- (a) the roughly 23,000 files Berry has listed in his 326 page pdf document, which was circulated to counsel on April 23, 2005 and which we understand was previously provided to the master, and
- (b) all files comprising or related to the version of the Berry database that Fleming used between March 7, 2003 and June 9, 2003.

Such an order should shield Guidance Software from any liability for disclosing the materials to the other parties in this case, and will expedite the process of getting the materials to Fleming's computer expert. Relatedly, we also request that you order Berry to provide an electronic version of the list of 23,000 files so Guidance might use it to speed the extraction process along.

As this is a matter of the highest priority within this case your prompt attention to this issue is appreciated.

Sincerely,



Damian D. Capozzola

Enclosure

cc: Lex R. Smith, Esq.
Timothy J. Hogan, Esq.
Roy J. Tjioe, Esq.
Karen L.S. Fine, Esq.
Lyle Hosoda, Esq.
Sheldon Toll, Esq.
Rex Fujichaku, Esq.



"Timothy J. Hogan"
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05/01/2005 06:21 PM

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bcc

Subject RE: Suspicious Files

Rex:

I'm resending to you Also, I'm not sure if I'm reading their recent motion right, but Fleming-PCT seems to want your client to release the Before and After images. Let me know what that would entail. If we just focus on the server (40 gig), we could get both the before and after copied to a 120 Gig drive with room to spare. I just bought one on sale for \$39.00 after rebate. I think that would work fine.

Tim Hogan

-----Original Message-----

From: Timothy J. Hogan [mailto:hogant001@hawaii.rr.com]
Sent: Friday, April 29, 2005 10:03 PM
To: Margery Bronster; Rex Fujichaku
Subject: Suspicious Files

Rex:

The document was produced pursuant to "Highly Confidential - Attorneys Eyes Only". You have told me you have not received it. It may not be shared with your client.

Please provide your and Margery Bronster's Exhibit A and I will get the file to you in the morning. If you have received this from someone else, please advise me of the circumstances.

Thanks in advance.

Timothy J. Hogan